

## General Terms and Conditions by the TRITEC Group for Commerce

### § 1 Scope

1. TRITEC's supplies, services and offers shall be exclusively made on the basis of the following Conditions of Sale and Delivery. The once agreed upon Conditions of Sale and Delivery shall also be valid for all future business relations even if they are not once again explicitly agreed upon. Any agreements which are made between the customer and TRITEC for the purpose of the execution of this contract shall be recorded in writing.

2. These conditions shall be considered accepted at the latest upon the receipt of goods or services. TRITEC's silence to different provisions by the customer shall not be considered as a consent to the customer's conditions; their validity is opposed. Any deviation from TRITEC's Conditions of Sale and Delivery shall be considered as a rejection of the order; any receipt of a delivery notwithstanding – even subject to reservations – shall be considered as consent to TRITEC's Conditions of Sale and Delivery.

3. Any agreements between the customer and TRITEC which supplement or modify these General Terms and Conditions shall only be valid if they are agreed upon in writing.

### § 2 Offer and Contract Conclusion

1. TRITEC's offers or, respectively, quotations shall be principally non-binding and without engagement, unless explicitly otherwise agreed upon.

2. Decisive shall otherwise be the prices, plus appropriate statutory sales tax, as indicated in TRITEC's order confirmation. Additional deliveries and services shall be separately invoiced.

3. Offers by TRITEC refer to the requirements known to us with regard to the specified quantities at the time of tendering or the confirmation regarding material quality, dimensional tolerances and manufacturer's conditions. Subsequent changes shall require our explicit consent and entitle us to change the price accordingly. Data in our brochures – such as photos, drawings and other specifications – are only approximately. Accordingly, they establish neither a quality agreement nor any warranty and shall not be relevant for the contractual provision of the service and delivery item.

4. Drawings, illustrations, dimensions, weights or other performance data shall only be binding if this is explicitly agreed upon in writing. Any illustrations, drawings, calculations and other documents shall remain TRITEC property and may not be transmitted to third parties without explicit consent. This shall also apply for such written documents which are designated "confidential".

5. The contract shall only become effective by TRITEC's written order confirmation to the customer based on the customer's order; this may also be done electronically (via email).

6. The contract shall be concluded with the proviso of correct and on-time delivery to TRITEC by TRITEC's suppliers. This shall only apply in the event that TRITEC is not responsible for the non-delivery, in particular, upon conclusion of a congruent covering deal with the supplier. The customer shall be immediately informed about the non-availability of performance. The quid pro quo shall be immediately reimbursed.

7. Upon contract signature, the customer shall agree to use the products only for the purpose of use intended by the manufacturer.

### § 3 Prices and Terms of Payment

1. TRITEC shall principally deliver against prepayment. If no prepayment is requested, the payment claim shall become due and payable at the latest with the provision of the delivery for the customer. Partial deliveries shall be paid within the scope of the individual delivery. Payment dates shall be complied with even if the delivery or acceptance of goods is delayed for reasons which TRITEC is not responsible for. Payments may not be reduced or refused due to complaints or unaccepted claims. Any discount deduction shall require a special written agreement.

2. Unless otherwise agreed upon in the order confirmation, prices shall be valid ex manufacturer or TRITEC warehouse, plus costs for packaging, insurance and shipping; these costs shall be separately invoiced.

3. TRITEC shall be entitled to change prices correspondingly if cost reductions or cost increases result, after contract conclusion, especially due to wage settlements or material price changes. This shall be substantiated to the customer upon request.

4. Statutory regulations shall apply regarding the consequences of any default in payment. Without prior notice of default, a penalty interest of 7% effective as of the payment due date shall be invoiced for receivables which are not paid as agreed.

5. The customer shall only be entitled to offset rights if the customer's counterclaims are recognized by declaratory judgment, uncontested, or have been acknowledged by us in writing. Moreover, the customer is entitled to exercise a right of retention insofar as his/her counterclaim is based on the same contractual relationship.

### § 4 Period of Delivery and Service

1. The written form shall be required for delivery periods or due dates which may be agreed upon as binding or non-binding. TRITEC's compliance with delivery and performance obligations shall require the prerequisite of the customer's on-time and proper performance of obligations. TRITEC shall be entitled at any time to partial deliveries and partial services, unless the partial delivery or the partial service is unsuitable for the customer.

2. Even in case of bindingly agreed upon time limits and due dates, TRITEC shall not be responsible for delivery and performance delays due to force majeure and due to events which make any delivery for TRITEC not only temporarily considerably impaired or impossible – this includes, in particular, strike, lock-out, official orders, etc., even if they occur at our suppliers' or their subcontractors. This shall entitle TRITEC to postpone delivery or, respectively, performance by the period of impairment, plus a reasonable start-up period or to rescind the contract wholly or in parts because of the part not yet performed.

3. If the obstruction takes more than three months, the customer shall be entitled to rescind the contract with regard to the not yet performed part – after having granted a reasonable extension of time. If the delivery or performance period is extended or if TRITEC is released from its obligations, the customer may not derive any damage claims therefrom. TRITEC can only rely on the indicated circumstances if it notifies the customer within a reasonable period of time.

4. As far as TRITEC is responsible for the non-compliance with bindingly promised time limits and due dates or if it is in delay, the customer shall be entitled to a compensation for the delay in the amount of one half percent for every completed week of delay; at maximum, however, to a total of up to five percent of the deliveries and services affected by the delay. Any claims in excess thereof shall be excluded, unless the delay is due to at least gross negligence by TRITEC.

5. If the customer is in delay of acceptance, TRITEC shall be entitled to demand restitution of the damage incurred. Unless already transferred, the risk of accidental deterioration and accidental loss shall pass over to the customer upon the onset of the delay in acceptance.

### § 5 Passage of Risk

1. The risk shall pass to the customer as soon as the shipment has been handed over to the person carrying out the transport or has left our warehouse for the purpose of shipment. If shipment is delayed upon the customer's request, the risk shall pass to the customer with the ready-for-shipment note.

2. If personal delivery is not possible due to the absence of the customer or a customer's representative, TRITEC's agent shall leave the material. The customer's risk and duty of care shall begin with the point in time of delivery, even without any personal delivery.

### § 6 Warranty

1. TRITEC shall be notified in writing of objections and complaints regarding deliveries and services within five days after receipt of the shipment, or for turn-key plants within five days after first commissioning. Warranty claims by the customer shall require that customer has properly complied with legally due requirements of examination and giving notice of defects.

2. Insofar as there is a defect of the goods, TRITEC shall be entitled, at its option, to post-performance in the form of a remedy of defects or delivery of new, non-defective goods. In case of a remedy of defects, TRITEC shall be obligated to bear all expenditures required for the purpose of the remedy of defects, in particular the costs of transport, infrastructure, work and material insofar as they do not increase due to the fact that the goods were taken to another location than the place of performance.

3. If post-performance fails, the customer shall be entitled to optionally demand rescission or reduction.

4. If the customer receives deficient assembly instructions, TRITEC shall merely be obligated to deliver faultless assembly instructions; this, however, only if the deficiency in the assembly instructions conflicts with proper assembly.

5. The warranty period shall be one year as of delivery. For consumers, the period of limitation shall be two years as of delivery. In case of an agreement of acceptance, the warranty period shall begin on the day of acceptance of the delivery object. The above shall not apply if the customer had not notified the defect in due time.

6. After expiry of the warranty period, TRITEC grants the performance warranty for modules to the customer according to the manufacturer warranty provided, as far as TRITEC can claim on the manufacturer's performance warranty.

7. Guarantees in the legal sense shall only be given by TRITEC if they are explicitly included in the order confirmation and have been designated as a promise of specific properties of the delivery object.

8. Warranty shall be excluded if the customer or a third party charged by the customer has improperly performed work on the delivery object. Any warranty claims shall expire if the customer attaches unauthorized additional devices or either him/herself or through third parties provides unauthorized interventions and/or repairs on delivery objects without explicit arrangement with TRITEC.

#### **§ 7 Liability**

1. TRITEC shall be liable according to the statutory conditions as far as the customer claims damages which are based on intent or gross negligence, including intent or gross negligence by our representatives or vicarious agents. As far as TRITEC is not charged with any intentional or grossly negligent breach of contract, the liability for damages shall be limited to the foreseeable, typically occurring damage or, respectively, excluded by agreement for countries in which this is permitted.

2. However, liability for damages shall be limited in all of the cases to the foreseeable, typically occurring damage, unless such a limitation violates mandatory law.

3. Liability for culpable injury of life, limb or health shall remain unaffected; this also applies for the absolute liability under the *Produkthaftungsgesetz* (Product Liability Law).

4. As far as liability by TRITEC is excluded or limited, this shall also apply for the personal liability of its executive personnel, workers, employees, representatives and vicarious agents.

#### **§ 8 Reservation of Ownership**

1. TRITEC shall reserve ownership in the goods until full payment of the purchase price. As far as permitted by the respectively applicable legal system, TRITEC shall reserve ownership in the goods – regarding contracts with companies – until the receipt of all payments from the business relationship with the customer.

2. In case of the customer's conduct in violation of the contract – in particular, in default of payment – TRITEC shall be entitled to repossess the goods. This claim for restitution of property shall only be considered a rescission of contract if TRITEC explicitly declares it in writing. After repossession of the goods, TRITEC shall be entitled to their realization; the realization proceeds shall be credited to the customer's liabilities – minus reasonable costs of realization.

3. The customer shall be obligated to handle the goods with care; in particular, the customer shall be obligated to adequately insure them, at his/her own costs, for their reinstatement value against damage due to fire, water, and theft. If maintenance and inspection work is required, the customer shall carry them out in due time at his/her own costs.

4. In the event of attachment/execution or other interventions by third parties, the customer shall notify TRITEC immediately in writing so that TRITEC can take corresponding defense measures. As far as a third party is unable to reimburse TRITEC for the legal and extrajudicial costs of a defense measure, the customer shall be liable for the loss which we incurred.

5. The customer shall be entitled to further sell the goods in proper business procedures; however, the customer already now assigns to TRITEC all receivables in the amount of the final invoice total (including sales tax) of the TRITEC receivable which he/she accrues from the further sale versus its buyers or third parties, irrespective of whether the goods have been further sold without or after processing. The customer shall remain entitled to collect this receivable even after the assignment. TRITEC's right to collect the receivable itself shall remain unaffected thereby. However, TRITEC agrees not to collect the receivable as long as the customer meets his/her payment obligations from the proceeds obtained, is not in default of payment and in particular, as long as no application for the institution of settlement or insolvency proceedings has been made, or as long as there is no payment stop. But if this is the case, TRITEC may demand that the customer discloses to TRITEC the assigned receivables and their debtors, provides all necessary information for the

collection, hands over the pertinent documents, and informs debtors (third parties) of the assignment.

6. TRITEC agrees to release the securities to which it is entitled upon the customer's request insofar as the realizable value of our securities exceeds the receivables to be secured by more than 10 %; TRITEC shall be responsible for selecting the securities to be released.

7. For leased articles, the customer shall be obligated to return the leased object on-time and in proper, clean and functioning condition. The customer shall accept full liability for any damage due to improper use, or theft, vandalism, accidents or the like. Every customer shall take care on its own for any repairs. If articles are lost which are necessary for the functioning of the leased article, they shall be principally invoiced to the customer. The customer shall take out insurance for the leased articles.

#### **§ 9 Design Changes**

We reserve the right to make design changes at any time; however, we shall not be obligated to make any such changes even on already delivered products.

#### **§ 10 Secrecy**

Unless otherwise explicitly agreed upon in writing, the information submitted to us in connection with orders shall not be considered confidential.

#### **§ 11 Export**

Any re-export of delivered goods from the territory of the European Union shall be subject to the country-specific export provisions and is possibly not allowed without an official permit. Export of the delivered goods from the territory of the European Union shall require the supplier's written consent; irrespective thereof, the customer shall obtain on his/her own any official import and export permits. The customer shall be responsible for compliance with the pertinent provisions up to the end consumer.

#### **§ 12 Final Provisions**

1. These General Terms and Conditions and the entire legal relations between the customer and TRITEC shall be governed by the law at the registered seat of the company where the order has been placed, with the exclusion of the Vienna UN-Convention on Contracts for the International Sale of Goods.

2. Legal venue for any disputes resulting directly or indirectly from the contractual relationship shall be exclusively at the registered seat of the company where the order has been placed.

3. Above, the respectively acting enterprise of the TRITEC Group has been designated as TRITEC. The contracting party shall acknowledge this and agrees that, with this type of designation, the individual enterprises of the TRITEC Group do not trigger any group liability.

4. Should any provision in these General Terms and Conditions or a provision within the scope of other agreements be or become invalid, the validity of any other provisions or agreements shall not be affected thereby. Instead of the invalid provision or to fill a gap, a regulation shall be agreed upon which – as far as legally allowed – comes closest to what the contracting parties had wanted.

5. The General Terms and Conditions are translated in several languages. The German version shall be ruling in case of any inconsistencies or in case of doubt.

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